

Questions and Answers

Good Governance Makes Sense for Exempt Organizations

Exempt Organizations' Customer Education & Outreach (CE&O) provides answers to general questions posed by our phone forum attendees. The following are answers to questions submitted by attendees of the **Good Governance Makes Sense for Exempt Organizations** phone forum on January 23, 2014.

CE&O has helpful information on its [homepage](#) about charities and nonprofits and on our interactive website at [Stay Exempt](#).

Also, see the phone forum presentations 501(c)(7) Social Clubs and Charities and Their Volunteers on the [Stay Exempt Resource Library](#).

1. Question:

Slide 7 states that two provisions of the Sarbanes-Oxley Act apply to non-profit organizations: whistle blower protection and document destruction. Are non-profits required to have these two provisions in place because of this act?

CE&O's response:

Sarbanes-Oxley Act (SOX) are requirements for publically traded firms. However, IRS encourages whistleblower protection and document destruction and retention policies as part of a good governance policies and procedures. See [Governance and Related Topics - 501\(c\)\(3\) Organizations](#).

2. Question:

Our organization is a 501(c)(3) group. We're conducting a wine tasting fundraising event to award scholarships to local student attending college. We're charging \$20 per person. A liquor store will host the event free. In fact, the liquor store will provide and serve small portions of several wines. Our organization will provide cheese and crackers. Do we need to place some value on the wine, cheese and crackers consumed at the event?

CE&O's response:

Donees do not have to disclose insubstantial value or low cost items to donors in a quid-pro-quo contribution event. The donors may deduct the entire value of their contributions without any offset for the insubstantial value or low cost items. For taxable years beginning in 2014, "low cost articles" are articles costing \$10.40 or less. See [Charitable-Contributions-Quid-Pro-Quo-Contributions](#). For further references, see [Publication 1771](#), *Charitable Organizations: Substantiation and Disclosure Requirements*. .

3. Question:

Over the years, we've awarded scholarships and made the checks payable to students and the college they're attending. The college offsets any aid that the college grants to the student. Can we make the \$500 check payable to the student after the student is enrolled? If not, as an alternative could we make the check payable to the student and the college's bookstore?

CE&O's response:

Yes, you're allowed to make grants directly to individuals. However, you're required to do due diligence to ensure that the individual uses the grant for the approved purposes.

See [Charities-&-Non-Profits/Private-Foundations/Grants-to-Individuals](#). Also, click the embedded link, "procedures approved in advance." In addition, review [Publication 970](#).

4. Question:

Can an organization give volunteers a \$50-\$500 gift card as annual stipend for telecommunications?

CE&O's response:

Providing gift cards in excess of \$25 on an annual basis may be a taxable event to the recipients. You should maintain an Accountable Plan if you're using gift cards to reimburse the volunteer for out-of-pocket expenditures. If the amount

you reimburse is in excess of the out-of-pocket expenditures, that amount may create a taxable event to the recipient.

See [Exempt Organizations: Compensation of Officers](#) and Publications [463](#) and [526](#).

5. Question:

Will undocumented or unsubstantiated reimbursement endanger our organization tax-exemption status?

CE&O's response:

While this may not affect your tax-exemption status, an audit or examination may subject your organization to penalties for improper recordkeeping.

6. Question:

Will reimbursement change volunteers into employees?

CE&O's response:

No, reimbursing volunteers for out-of-pocket expenses will not change their classification, even if there's an overpayment. See [Publication 15-A](#).

7. Question:

What expenses the organization can reimburse the volunteer?

CE&O's response:

You may reimburse the volunteer for any out-of-pocket expenses paid on behalf of the organization. See publications and website listed above.

8. Question:

What is the provision of information concerning how group ruling subordinate organizations may be verified as tax exempt and as entities to which tax-deductible contributions can be made?

CE&O's response:

The central organization that holds a group exemption (rather than the IRS) determines which organizations are included as subordinates under its group exemption ruling. Therefore, you can verify that an organization is a subordinate under a group exemption ruling by consulting the official subordinate listing approved by the central organization or by contacting the central organization directly. You may use either method to verify that an organization is a subordinate under a group exemption ruling. You can also call toll-free our Customer Account Services at (877)829-5500 for additional information.

9. Question:

Are organizations with pending applications automatically reinstated if they meet the requirements?

CE&O's response:

Under Revenue Procedure (Rev Proc.) 2014-11, applications that have been approved under the streamlined procedures are automatically reinstated to the date of revocation.

10. Question:

Will there be a written notification from the IRS to organizations with pending reinstatement applications on file?

CE&O's response:

Once an application is assigned, the agent may contact the organization if more information is needed, otherwise the agent will proceed with processing and notify the organization of his or her determination.

11. Question:

How long does the IRS anticipate notification to take for those pending applications that are eligible for the new streamlined reinstatement?

CE&O's response:

We're experiencing a significant backlog in processing the applications under the streamlined procedures. We can't provide a timeframe for when an application will be processed.

12. Question:

What kind of timeline can be expected for an organization to be updated in the online [EO Select Check](#) database, to show as exempt vs. revoked?

CE&O's response:

An organization should be updated on EO *Select Check* 30 days after receiving a determination letter or revocation letter. If not, an individual may call toll-free Customer Account Services at (877) 829-5500 for assistance.

See [Rev Proc. 2014-11](#).

13. Question:

What is our status while we're waiting for our application to be processed? What should we tell our donors about the tax-deductible nature of their generous donations?

CE&O's response:

You're in "applied for status." You may have received a letter from us acknowledging receipt of your application and that an agent may contact you after the agent has been assigned your application. While you're in "applied for status," you must conduct your activities as represented in your exempt application, including filing an annual Form 990-EZ or 990. If you've filed Form 1023, you should inform potential donors of your "applied for status" and that you may accept tax-deductible charitable contributions during this period.

However, if you are denied exemption, you must contact donor and informed them of this denial. The donors will have to amend their tax return to remove any charitable contributions donated to your organization.

See [Tax-Law-Compliance-Before-Exempt-Status-Is-Recognized](#).

14. Question:

How would the founder of a small organization, which is awaiting their determination letter from the IRS, claim the costs of forming the organization if the organization doesn't have the capital to reimburse her directly? Can these expenses be included in her personal return as unreimbursed employee expense or would the cost of establishing the entity qualify as a donation?

CE&O's response:

The donor/volunteer may deduct the amount paid as a charitable contribution if he or she is not reimbursed. The requirements of the written acknowledgement from donee depend on the amount donated. These publications will assist you with what information should be included in the written acknowledgement.

- [Publication 526, Charitable Contributions](#)
- [Publication 1771, Charitable Contributions - Substantiation and Disclosure Requirements](#)

If the individual is an employee, then he or she should file Form 2106 or 2106-EZ. These forms and the applicable instruction can be found under the Forms and Pubs tab on [IRS.gov](#).

15. Question:

Form 990 is subject to publicly disclosure. What are the procedures for obtaining a 990 for a particular organization? Is there a form to complete or a website where all 990s are available? Or, is it the responsibility of the organization to disclose it?

CE&O's response:

All organizations that file a Form 990 must make their informational return publically available upon request. If you ask, the organization will provide a copy of their Form 990 for you to review. Also, organizations like Guide Star and

Foundation Center have Form 990s available for public scrutiny. The IRS does not support these organizations. We do not maintain copies of filed Form 990's on our websites. Organizations that wish to obtain a copy of their filed Form 990, should call toll-free Customer Account Services at (877)829-5500.

16. Question:

Do all registered tax-exempt organizations need to file Form 990, including schools associated with a church?

CE&O's response:

Generally, all tax-exempt organization must file annually one of the Form 990 series unless specifically exempted. Churches, church auxiliaries, Sunday school associated with the church are exempted. A weekday school program established and managed by a church or religious organization, as an auxiliary function, will not need to file a Form 990, but would be required to file for exemption using Form 1023.

See the [Churches and religious organizations](#) and [Publication 557](#).

17. Question:

Are there any guidelines on what is considered "substantial" UBIT for a non-profit?

CE&O's response:

Visit our [UBIT page](#).

18. Question:

For the fiscal year 2013, I was required to file the Form 990 as we had an unusual large one-time donation. For this fiscal year, it's anticipated that we will receive between \$5,000 and \$10,000 as contributions. Will I be able to file the postcard for this fiscal year ending June 30, 2014?

CE&O's response:

If you've been filing 990-N (e-Postcard) in the past, you should be able to continue. However, if you have a problem filing your 990-N, please call toll-free our Customer Account Services at (877)829-5500.

19. Question:

Is there any guidance for small staffed nonprofits in terms of what level of governance we should follow (as compared to a large nonprofit with dedicated admin, HR, and finance staff)?

CE&O's response:

You should discuss your level of governance and internal controls with a legal adviser and a CPA knowledgeable in the areas of non-profit organizations. At a minimum, you must continually be organized and operated for your established exempt purpose; you must file annually one of the Form 990 series information returns, unless specifically exempted from filing a 990; and, none of your assets may inure or privately benefit any individual or a for-profit entity. In addition to the websites mentioned above, visit [How to Stay Exempt](#).

20. Question:

Can a private foundation (non-operating) purchase an auto that would be used for 50 percent for business use and 50 percent personal use? The individuals (board president & VP) using this auto are disqualified persons, is there disclosure requirements to report for this purchase (other than on the balance sheet) are there other excise taxes the foundation would be subject to?

CE&O's response:

This appears to be an instance of self-dealing.

See [Private-Foundations/Taxes-on-Self-Dealing-Private-Foundations](#) and [Exemption Requirements](#).

21. Question:

How will the IRS look on an organization that does not meet the 33-1/3 percent public support guideline for several consecutive years?

CE&O's response:

Organizations that do not meet the 33-1/3 percent public support test may qualify under the Facts and Circumstances test. If an organization fails to qualify under either test, the organization is a private foundation. See [Publication 557](#) and the instructions for [Schedule A](#) of Form 990.

22. Question:

Whom do I contact if I have a specific question about some unethical and criminal activities by some club members?

CE&O's response:

You should report any unethical or criminal activities in your organization to the Board; also seek the advice of an attorney.

See [How to Report Suspected Tax Fraud](#). If you have additional information about an exempt organization that you want to submit for our consideration, send comments to:

**IRS-EO Classification
1100 Commerce Street
MC 4900 DAL
Dallas, TX 75242**

23. Question:

There is a slide showing that EO's need a Whistleblower Policy and a Document Retention Policy due to the Sarbanes-Oxley Act. It does not mention the Conflict of Interest Policy requirement under the Sarbanes-Oxley Act. Could you tell me the origin of this requirement?

CE&O's response:

The Sarbanes-Oxley Act does not address a Conflict of Interest policy. The Conflict of Interest policy is highly recommended by IRS. This policy should

encourage organization to be more responsive to tax compliance and avoid unethical behavior that would lead to excise taxes or worst, revocation of an exempt status.

See [Exempt Requirements Section 501\(c\)\(3\) Organizations](#) and [Form 1023: Purpose of Conflict of Interest Policy](#).

24. Question:

If a subordinate unit under a parent group 501(3)3 files the 990EZ on an annual basis and used the wrong tax year form to report a given fiscal year does that unit needs to file an amended return along with schedule O?

CE&O's response:

Yes, the organization should file an amended 990-EZ with the correct filing year; and a Schedule "O," which should indicate the reason for filing the amended return.

25. Question:

Should we include Internal Control Policy, Code of Ethics Policy, and Whistleblower Policy in our submission to apply and receive the 501(c)(3) tax exemption status?

CE&O's response:

You may either include these policies in your exempt application Form 1023 or 1024, or make representation to them in your narrative regarding your operations.

26. Question:

What dollar amount (or assets) is a certified audit needed for a nonprofit organization?

CE&O's response:

The level and scope of a CPA's engagement would be based upon the board's decision, the nature and size of your activities, any state requirements, and any requirements imposed upon your organization from a funding source.

27. Question:

One of my clients is a member of a small church, which has recently started its own school. Is the school automatically considered a tax-exempt organization like the church, since it functions under the church, or does the school need to apply for tax-exempt status as a separate organization? They have a separate EIN for the school.

CE&O's response:

Sunday school in the classical sense would be considered a mission of the church's exempt purpose. However, a weekday school program that would be similar situated as a public or private school would not be a part of the church's exempt purpose. However, the weekday school program may be treated as an auxiliary of the church. Review [Churches-&-Religious-Organizations](#) and [How-to-Apply-to-Be-Tax-Exempt-1](#).